

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.27 of 2008

Md.Aasiya Marium

... Appellant

vs.

1. Shariffa Nachiyar @ Mubharak Nachiyar

2. Hameetha Parwan

3. Habeebhu Kazitha Nachiyar

4. The Commissioner,
Nagapattinam Municipality,
Nagapattinam.

...Respondents

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 16.12.2005 and made in A.S.No.49 of 2005, on the file of Principal Subordinate Court, Nagapattinam, confirming the judgment and decree dated 30.03.2005 and made in O.S.No.275 of 20011983 on the file of Learned District Munsif Court, Nagapattinam.

For Appellant : Mr.P.Veena Suresh
For Respondents : Mr.N.Subbarayalu for R4
No appearance for R1 to R3

J U D G M E N T

Though notice to the respondents 1 to 3 was served, they have not chosen to appear before this Court either in person or through counsel. Their names are also printed in the cause list.

2. The unsuccessful plaintiff before both the Courts below is the appellant herein. She filed a suit for mandatory injunction directing the 4th defendant to effect certain changes in the records of the Municipality thereby removing the name of the defendants 1 to 3 contained therein. The defendants 1 to 3 contested the said suit and disputed the claim of the plaintiff over the suit property in its entirety. The Courts below, based on the appreciation of pleadings of the respective parties and the evidence let in by them, came to the conclusion that the plaintiff is not entitled to the mandatory injunction as sought for in the suit, especially, when the defendants 1 to 3 are also in joint possession.

3. Heard both sides.

4. Needless to say that the relief sought for in the suit is at the best can be a consequential one, when the title to the suit properties in its entirety

claimed by the plaintiff is disputed by the defendants. Hence, it is for the plaintiff to seek appropriate relief by filing appropriate suit before the competent Court. Without doing so, seeking mere mandatory injunction relief against the 4th defendant, in my considered view, is not maintainable and the Courts below have rightly found so and rejected the suit. Therefore, I find no substantial question of law arises for consideration in this appeal in favour of the plaintiff even to entertain the appeal for further hearing. Accordingly, the Second Appeal fails and the same is dismissed. However liberty is granted to the plaintiff to file a separate suit seeking for appropriate relief in respect of the suit property. If any such suit is filed, it is open to the Courts below to consider the same on merits and in accordance with law uninfluenced by any of the contentions raised before this Court. No costs.

23.09.2016

Index: Yes/No
vsi

To

1. The Principal Subordinate Court, Nagapattinam.
2. The District Munsif Court, Nagapattinam.

K.RAVICHANDRABAABU,J.

vsi

Second Appeal No.27 of 2008

